

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**ORIN DAVID JACKSON**

Claimant

VS.

**HANDYMAN CONNECTION**

Respondent (uninsured)

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Docket No. 1,016,176

**ORDER**

Respondent requests review of the May 24, 2005 preliminary hearing Order entered by Administrative Law Judge (ALJ) Robert H. Foerschler.

**ISSUES**

The ALJ authorized Dr. Ketchum to be claimant's authorized physician and to proceed with the surgical intervention he recommended for claimant's injury of March 11, 2004, and which was deemed compensable by the Board in its Order dated September 30, 2004.

The respondent requests review of this decision asserting that the newly offered evidence, in addition to that offered at the earlier preliminary hearing, establishes that claimant was an independent contractor and not eligible for benefits under the Act, K.S.A. 44-501, et seq.

Claimant contends the respondent's additional evidence provides no basis or justification to alter the Board's legal conclusion he was respondent's employee at the time of his injury.

Thus, the only issue to be decided is whether claimant has established that he was an employee of respondent's on March 11, 2004, the date he sustained accidental injury.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, the Board finds that the preliminary hearing Order should be affirmed.

This is the second time this matter has been before the Board on appeal from a preliminary hearing Order. Following the first preliminary hearing, the ALJ denied claimant's request for benefits under the Act as he concluded claimant was an independent contractor rather than an employee. On September 30, 2004, the Board issued an Order reversing that finding and granting the claimant benefits. In distinguishing between the relationship of an employee and that of an independent contractor, the Board stated the following:

There are instances where the facts surrounding the parties [sic] relationship compel a finding of an independent contractor status.<sup>1</sup> However, the difference between those cases and the one at hand is that respondent's business handles small home repairs, it advertises for small home repairs, and hires people to perform those small home repairs for its customers. The customers pay respondent when the work is done. If there are insufficiencies in the work, respondent acts as a mediator. Respondent may not be present on the job each and every day controlling every aspect of the jobs, but the greater weight of the evidence compels the conclusion that claimant is an employee in spite of respondent's contentions to the contrary.<sup>2</sup>

On May 16, 2005, a second preliminary hearing was held. Respondent offered additional evidence intended to persuade the ALJ, or if necessary, the Board, that claimant was, in fact, an independent contractor, contrary to the Board's earlier finding. The additional testimony includes information provided by respondent's office manager, Della Hernandez, and Robert West, another individual who purports to be an independent contractor who performs work for respondent.

Ms. Hernandez testified that she believed claimant was an independent contractor. She also testified that claimant never called her for price estimates on those jobs he was referred, contrary to what claimant has testified. Mr. West testified that he believed himself to be an independent contractor.

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<sup>1</sup> See e.g., *Yingling v. LCA, Inc.*, No. 1,014,862, 2004 WL 1067490 (Kan WCAB Apr. 15, 2004).

<sup>2</sup> Order (Sept. 30, 2004) at 3-4.

The ALJ abided by the Board's September 30, 2004 Order and authorized the medical treatment outlined by Dr. Ketchum. Respondent has appealed that Order alleging the ALJ erred and "exceeded his authority in granting benefits."<sup>3</sup> The Board disagrees.

The Board has reviewed the additional evidence and is not persuaded that claimant is an independent contractor. Claimant was hired to perform small home repairs for a company that provides that service. The fact that he signed a document purporting to be an independent contractor is not necessarily dispositive. Respondent refers claimant to job prospects and he must maintain contact with them regarding the price of the contract. All of the paperwork is done on respondent's letterhead. When the contract is completed, the homeowner pays respondent and respondent, in turn, pays claimant a portion of the proceeds. Respondent also addresses any complaints during the warranty period. Notwithstanding Mr. West and Ms. Hernandez's conclusions, the Board remains persuaded that claimant was respondent's employee on the date of his accident.

**WHEREFORE**, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Robert H. Foerschler dated May 24, 2005, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of June, 2005.

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BOARD MEMBER

c: Mark E. Kolich, Attorney for Claimant  
Samantha N. Benjamin, Attorney for Respondent  
Robert H. Foerschler, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director

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<sup>3</sup> Request for Board Review at 1 (filed May 26, 2005).